"Ireland a Nation." Professor Dicey is unalterably opposed to the federalization of the British Empire. The time is not ripe for any such hazardous experiment. It will tend to weaken rather than strengthen the Empire, and it is opposed to the entire course of development of British institutions.

The splendid tone of the entire introduction is typified by the words he uses in this connection. "I yield to no man in my passion for the greatness, the strength, the glory, and the moral unity of the British Empire. I am one of the thousands of Englishmen who approved, and still approve, of the war in South Africa, because it forbade secession. But I am a student of the British constitution; my unhesitating conviction is that the constitution of the Empire ought to develop, as it is actually developing, in the same way in which grew up the constitution of England." C. A. M.

HISTORY OF ROMAN PRIVATE LAW. Part II. Jurisprudence. By E. C. Clark. Cambridge: Cambridge University Press. 1914. 2 volumes. pp. xiv, 802.

One cannot read these volumes without a feeling of regret that so much learning and so much sound yet acute scholarship should have been expended upon the carrying out of so unfortunate a plan. The scope and the execution of the work were obviously determined by the exigencies of English university teaching upon the basis of Austin and the Roman institutional books in preparation for an examination in those subjects along settled lines. As Professor Clark tells us in his preface, candidates for examination may also be students; but the limitations imposed upon study and teaching by candidacy for examination before examiners who follow conventional lines are strikingly apparent even in a book prepared primarily for those studying a subject for its own sake. The two volumes are a critique of Austin with reference to the history of Roman law and an examination of the ideas of Roman jurists and institutional writers from the standpoint of English analytical jurisprudence. Hence we get neither a treatise upon jurisprudence nor a history of Roman law, though the work bears both titles. Moreover, the self-imposed limitations of English analytical jurisprudence exclude many things which would be valuable and significant in either type of book taken by itself.

In many particulars, however, Professor Clark has gone beyond the English analytical and historical jurists. Thus he rejects the once orthodox English view of the total irrelevancy of philosophy in jurisprudence (I, 24). In contrast with Austin's vigorous exclusion of every ethical element in duty and in political obligation he is willing to consider "popular morality," since it is a prime factor not only in the remote origin of law but in its "daily growth and improvement at the present time" (I, 86–87). The nineteenth century by way of reaction from the infusion of morals into law and identification of law and morals in the seventeenth and eighteenth centuries sought to separate them. It sought certainty rather than ethical results. It is very significant that the ethical side is again making itself felt in juristic writing, and in this respect Professor Clark's book is quite abreast of the current. This tendency appears also in connection with the appeal to popular morality in judicial consideration of what is reasonable (I, 106). He shows that this is what the Roman *æquitas* was, and of course it is what is demanded by those who insist upon equitable application of law in Continental Europe and those who insist upon a more liberal judicial application of law in this country. Again, he not only rejects the metaphysical method of the nineteenth-century philosophy of law for which the English have never had any taste, but he appears to throw over Sir Henry Maine's historical-metaphysical method and the resulting exclusively political interpretation of jurisprudence to which Maine's Ancient Law gave

such currency in the last century. What is of even more significance, while adhering to what I have called elsewhere the third stage of the Anglo-American analytical formula, by taking as the test of positive law "efficient existence" (I, 69), he goes further, and is willing to include under the term "positive law" rules and standards which get their efficiency from other than purely judicial tribunals. His formula is: "The rules and principles recognized and applied by the State's authorities judicative and executive" (I, 75). Here we have, so far as I know, the first recognition in analytical jurisprudence of the rise of executive justice in England of to-day. Nor is this all. "Taking *positive*," he says, "to indicate efficiency and importance, I should say that any rules of human conduct actually obtaining among any considerable number of human beings, in some manner connected or associated together, by virtue of *human sanctions*, might not improperly be called Positive Law" (I, 90). This should be compared with the chapter on investigation of living law in Professor Ehrlich's "Grundlegung der Soziologie des Rechts." If in the primitive community social control was effected through *fas* and *boni mores* as well as through *ius*, in other words, if religion and the internal discipline of the *gens* and the *collegium* played no less part once than that played by the law, we have to recognize that to-day, for example, the internal discipline of a labor union may be quite as effective an agency of social control as the law, and may actually supersede the law of the land in actual practice. While we need not use the term "positive law" for effective means of social control which lack the authority of the state, and, in the interest of critical terminology, probably ought not to do so, these are things which one who studies the law as a whole cannot afford to overlook and it is significant that the exclusive attitude which was once the glory of the English analytical jurist is not maintained.

It is evident, then, that the author was qualified not only by learning and scholarship but by sympathy with the modern movement in jurisprudence to write a textbook of the science of law in English which should do for a period of legal growth what Austin did for a period of legal stability. Unhappily the demands of a system of education whereby one must prepare students to be examined by others along traditional lines have prevented anything more than occasional adumbrations of what the author might have done and we could wish he had done. The book is not one of which the ordinary student of jurisprudence can make much use, nor was it probably intended for him. The teacher, on the other hand, may read it profitably, and indeed should resort to it continually in connection with the application of the analytical method to the Roman law and the bearing of Roman legal institutions upon the questions debated by Austin and his critics. It is a book of reference which no teacher can afford to overlook.

One would hardly expect from the Cambridge University Press "Remington" for Runnington (I, 105); "Spencer's" Equitable Jurisdiction for Spence's (I, 113); "*Gerichtsgebranch*" (I, 123), and much more of that sort; and it is not flattering to American scholarship to read of "Prof. Thayer" for Albert S. Thayer, Esq., of New York (I, 110); "Mr. A. S. Thayer of Harvard" (I, 135); or "Professor A. S. Lowell" (I, 211).

R. P.

THE HISTORY AND PRESENT POSITION OF THE BILL OF LADING AS A DOCUMENT OF TITLE TO GOODS (being the Yorke Prize Essay for the year 1913). By W. P. Bennett, B.A., LL.B. Cambridge: University Press. 1914. pp. viii, 101.

This little book is a creditable attempt to state systematically the result of the English decisions on bills of lading as documents of title. Their effect as contracts with the carrier is not discussed. An appendix presents briefly the